

(p) *Securities documentation* means the applicable statement of terms and conditions or other documents establishing the terms of a Book-entry Sallie Mae Security.

(q) *Securities intermediary* means:

(1) A Person that is registered as a “clearing agency” under the federal securities laws; a Federal Reserve Bank; any other Person that provides clearance or settlement services with respect to a Book-entry Security that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority; or

(2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(r) *Security* means any note, bond, debenture, evidence of indebtedness, or, in general, any interest or instrument commonly known as a “security.”

(s) *Security entitlement* means the rights and property interest of an Entitlement Holder with respect to a Book-entry Sallie Mae Security.

(t) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(u) *Transfer message* means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry Sallie Mae Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

[62 FR 622, Jan. 6, 1997, as amended at 69 FR 18803, Apr. 9, 2004]

**§ 354.2 Law governing rights and obligations of Federal Reserve Banks, and Sallie Mae; rights of any Person against Federal Reserve Banks and Sallie Mae.**

(a) Except as provided in paragraph (b) of this section, the following are

governed solely by the book-entry regulations contained in this part 354, the Securities Documentation (to the extent not inconsistent with these regulations) and Federal Reserve Bank Operating Circulars:

(1) The rights and obligations of Sallie Mae and the Federal Reserve Banks with respect to:

(i) A Book-entry Sallie Mae Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Sallie Mae Securities; and

(2) The rights of any Person, including a Participant, against Sallie Mae and the Federal Reserve Banks with respect to:

(i) A Book-entry Sallie Mae Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Sallie Mae Securities.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 354.4(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant’s Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 354.14(c)(1), is governed by the law determined in the manner specified in § 354.3.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8 (incorporated by reference, see § 354.1), then the law specified in paragraph (b) shall be the law of that State as though Revised Article 8 had been adopted by that State.

**§ 354.3 Law governing other interests.**

(a) To the extent not inconsistent with the regulations in this part, the law (not including the conflict-of-law rules) of a Securities Intermediary’s jurisdiction governs:

#### § 354.4

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(1) The acquisition of a Security Entitlementment from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlementment;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlementment;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlementment from the Securities Intermediary or a Person who purchases a Security Entitlementment or interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection and priority of a security interest in a Security Entitlementment.

(b) The following rules determine a “Securities Intermediary’s jurisdiction” for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary’s jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary’s jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the Securities Intermediary’s jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder’s account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder’s account as provided in paragraph (b)(3) of this section, the Securities

Intermediary’s jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8 (incorporated by reference, see §354.1), then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Participant’s Securities Account is a clearing corporation, and the Participant’s interest in a Book-entry Security is a Security Entitlementment.

#### **§354.4 Creation of Participant’s Security Entitlementment; security interests.**

(a) A Participant’s Security Entitlementment is created when a Federal Reserve Bank indicates by book-entry that a Book-entry Sallie Mae Security has been credited to a Participant’s Securities Account.

(b) A security interest in a Security Entitlementment of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlementment of a Participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the